THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARTIN LUTHER KING, JR. COUNTY, et al.

Plaintiffs,

vs.

SCOTT TURNER in his official capacity as Secretary of the U.S. Department of Housing and Urban Development, et. al.

Defendants.

No. 2:25-cv-00814-BJR

PLAINTIFFS' REPLY IN SUPPORT OF SECOND MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

This Court should issue a preliminary injunction (PI) prohibiting Defendants from imposing unlawful conditions on Plaintiffs' federal grants administered by the U.S. Department of Transportation (DOT) and the U.S. Department of Housing and Urban Development (HUD). In their opposition to Plaintiffs' second PI motion (Motion), Defendants rely on the same arguments this Court has now rejected twice, including that this Court (and perhaps every court) lacks jurisdiction to hear Plaintiffs' claims and that Defendants have unfettered discretion to attach conditions to federal grants. *See* Dkt. # 151 at 1. Yet despite raising no new defense, Defendants continue to brazenly defy this Court's TROs, reportedly issuing blanket instructions to employees not only preventing the release of funds for approved grants but also directing that grant agreements provided to or submitted by Plaintiffs be "place[d] . . . on hold . . . because of the pending litigation." 2d Beckmeyer Decl. (KCRHA), Ex. A. TROs (and PIs) are meant to maintain the status quo—in this case routine grant administration minus the enjoined conditions. Rather than comply, Defendants are effectively suspending the programs as to Plaintiffs. Defendants' actions underscore the necessity of a PI, and that such relief must be fashioned to compel immediate compliance, including through verification that agency employees have been properly directed and a status report to the Court.

In their opposition, Defendants acknowledge Plaintiffs seek a PI enjoining the same Federal Transit Administration (FTA) grant conditions this Court has previously enjoined. But after three tries, Defendants still have not identified any statutes that authorize the unlawful conditions now being attached to all DOT grants, including the newly added DOT operating administrations—the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and Federal Railroad Administration (FRA). Nor do they attempt to distinguish the

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irreparable harm Plaintiffs newly face from those this Court has already considered. Accordingly, this Court should issue a PI for the reasons presented in Plaintiffs' first and second TRO and PI motions, including the likelihood of success on the merits of their Separation of Powers, Fifth Amendment, Spending Clause, and Administrative Procedure Act (APA) claims.

Defendants' only new argument responds to Plaintiffs' Tenth Amendment claim challenging the DOT Immigration Enforcement Condition. Dkt. # 151 at 4–6. First, given the likelihood of success on Plaintiffs' other claims, a PI can and should be issued without regard to the merits of the Tenth Amendment claim. Second, Defendants fail to rebut Plaintiffs' likelihood of success as to this claim. None of the cases Defendants cite support the Executive branch unilaterally imposing conditions not authorized by Congress and unrelated to the grant programs' purposes. Moreover, Defendants ignore that the financial impacts on DOT Plaintiffs[1] more than meet the coerciveness standard. The DOT Immigration Enforcement Condition violates the Tenth Amendment's restriction on federal power by coercing local officials to carry out federal immigration policy under threat of losing all DOT funding—a financially catastrophic loss to many local governments already reeling from the effects of the COVID-19 pandemic.

This Court should grant Plaintiff's Motion, enjoin Defendants' continued overreach, and require Defendants to process grant agreements including the release of grant funds during the pendency of this litigation.

II. ARGUMENT

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claims

Plaintiffs incorporate their prior arguments regarding violation of the Constitution's separation of powers principles, the Spending Clause, the Fifth Amendment's vagueness doctrine,

[1] *See* Dkt. # 71 ¶¶ 8–38 (identifying the DOT Plaintiffs and the HUD Plaintiffs).

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and the APA. Dkt. # 5 at 14–26; Dkt. # 44 at 8–9; Dkt. # 58 at 7–14; Dkt. # 72 at 8–15. Defendants offer no new arguments on these claims. And Defendants' sole new argument under the Tenth Amendment provides no bar to the Court's issuance of a PI.

Defendants' Tenth Amendment argument fails. As Plaintiffs' Motion explained, the DOT Immigration Enforcement Condition impermissibly seeks to commandeer local officials into enforcing immigration law by threatening to restrict *all* DOT funding unless Plaintiffs comply with the administration's immigration agenda. Dkt. # 72 at 12–13. This violates the principle that the federal government may not coerce a state to adopt a federal regulatory system as its own through economic compulsion. *Nat'l Fed. of Indep. Bus. v. Sebelius* (*NFIB*), 567 U.S. 519, 578 (2012) (opinion of Roberts, C.J.).

Defendants contend the DOT Immigration Enforcement Condition is not subject to a coerciveness analysis because it "does not threaten any 'independent' grant funds," but instead "affect[s] only the funds that go to" funded programs. Dkt. # 151 at 5. Defendants assert the condition the Supreme Court struck down in *NFIB* affected both new funds the Affordable Care Act (ACA) made available and existing Medicaid funds, making the condition more coercive than if it had applied only to new funds. *Id.* (citing 567 U.S. at 579–80). Thus, Defendants interpret *NFIB* to suggest *only* conditions that threaten to terminate "independent grants" may be unconstitutionally coercive. *Id.* But *NFIB* does not support this narrow interpretation, and other case law refutes it.[2]

[2] A perverse result of Defendants' interpretation would be to allow any condition in a grant—no matter how coercive—so long as it impacts only the funding available in the grant. For instance, under the penalty of withholding federal highway funding, the administration could coerce local governments to pay subcontractors with $TRUMP coins.

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Contrary to Defendants' interpretation of *NFIB*, the Supreme Court's anti-commandeering cases have long made clear that the essential inquiry is whether the state or municipality "retain[s] the ultimate decision" to adopt a federal policy or whether it is forced to do so "due to federal coercion." *New York v. United States*, 505 U.S. 144, 168–69 (1992). Such coercion can take many forms. In *NFIB*, the Supreme Court held conditions that threaten "to terminate other significant independent grants" are an "*example*" of "a means of pressuring the States to accept policy changes." 567 U.S. at 580 (emphasis added). But it was ultimately "[t]he threatened loss of over 10 percent of" some of the plaintiff-states' "overall budget[s]" that rendered the ACA's Medicaid condition unconstitutional "economic dragooning." *Id.* at 582.

Here, the DOT Immigration Enforcement Condition threatens Plaintiffs that refuse to adopt federal policy on immigration enforcement with similarly devastating losses. *See, e.g.*, Dkt. # 80 ¶ 20 (DOT funding makes up approximately 10–15% of Culver City's annual Operating and Capital budget); Dkt. # 81 ¶¶ 2, 5 (Denver's Department of Transportation & Infrastructure relies on approximately $300 million in federal funds to support its $340 million annual budget); Dkt. # 98 ¶ 9 (San Francisco expects to receive over $2 billion in DOT grant funding).[3] In fact, Defendants admit the "proportion of state and local budgets that is federally funded remains enormous." Dkt. # 151 at 6. By purporting to condition *all* DOT funds on cooperation with federal immigration enforcement, Defendants seek to force municipalities' hand and allow federal

[3] Because municipal budgets are broken into various restricted fund balances, the relevant consideration for determining coercion is not the total federal funds received by the jurisdiction, but the funds available to perform a particular service. For example, HUD CoC grants may represent an extremely high percentage of available funding for transitional and supporting housing and services, even though the total funding available for those crucial services is a relatively modest percentage of the overall municipal budget. Grant conditions that force municipalities to abandon an entire line of service, rather than accept poison pill conditions, are inherently coercive.

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officials to effectively command local officials on matters of immigration. Such blatant attempts to coopt local resources for federal purposes is straightforward unconstitutional commandeering. *See United States v. California*, 921 F.3d 865, 888–90 (9th Cir. 2019) (federal requirement forcing states to cooperate in immigration enforcement would violate the Tenth Amendment).

Indeed, multiple courts have struck down similar attempts by the current and former Trump administrations to use grant conditions to coerce local cooperation with immigration enforcement—and no court relied on whether the conditions affected "independent" grant funds. *See City & Cnty. of S.F. v. Trump* (*San Francisco*), 25-CV-01350-WHO, 2025 WL 1282637, at *31–32 (N.D. Cal. May 3, 2025) (executive orders conditioning all federal funds on cooperation with immigration enforcement violated Tenth Amendment by "coerc[ing] localities that do not wish to cut essential programs into accepting the federal government's conditions in exchange for the funds they were promised"); *Cnty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 533 (N.D. Cal. 2017) (executive order placing "sanctuary jurisdictions" at risk of losing all federal grants violated Tenth Amendment by "seek[ing] to compel the states and local jurisdictions to enforce a federal regulatory program through coercion").

The court in *San Francisco* also rejected the argument Defendants raise here that localities could simply "decline to apply for the specific [agency] grants to which any offensive conditions are attached" and thus avoid any "commandeering of their sovereignty." 2025 WL 1282637, at *31; *compare* Dkt. # 151 at 4–5. The *San Francisco* court further distinguished *Environmental Defense Center, Inc. v. EPA*, which Defendants rely on here. In that case, the challenged federal regime allowed the plaintiffs to pursue an alternative permit option rather than adopt a federal regulatory program. *Envtl Def. Ctr., Inc. v. EPA*, 344 F.3d 832, 847 (9th Cir. 2003). By contrast, the *San Francisco* court explained, "the Cities and Counties have no alternative funding option"

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and "no choice to pursue their chosen sanctuary policies if they are to receive federal funding." 2025 WL 1282637, at *31. As in *San Francisco*, Plaintiffs here have no "alternative to implementing" federal policy that "does not offend the Constitution's guarantee of federalism." *Id.* (quoting *Envtl. Def. Ctr., Inc.*, 344 F.3d at 847). The only other option—the catastrophic loss of *all* DOT funding—is no option at all.

Defendants next contend that unless the anti-commandeering doctrine is limited to grant conditions that affect purportedly "independent" grants, "any widely used federal condition on state and local funding would be unconstitutional." Dkt. # 151 at 5. That argument fails because the Tenth Amendment applies only when grant conditions affect powers reserved to the states. *See New York*, 505 U.S. at 155–56; *City of Portland v. United States*, 969 F.3d 1020, 1049 (9th Cir. 2020) (holding the Tenth Amendment was not implicated where agency was "interpreting and enforcing the 1996 Telecommunications Act, adopted by Congress pursuant to its delegated authority under the Commerce Clause"). It does not prevent Congress from limiting the use of federal funds so long as it does so without commandeering local officials, coopting policymaking functions, or otherwise invading state or local sovereignty and so long as the conditions are authorized by Congress or a provision of the U.S. Constitution. *See New York*, 505 U.S. at 167 (Congress may require states to adopt a regulatory program or else have state law pre-empted by federal regulation); *Dole v. South Dakota*, 483 U.S. 203, 207–08 (1987) (discussing limits on funding conditions). Accordingly, Defendants' straw man argument fails. Not only does no legislation or constitutional provision authorize DOT to adopt any of the conditions here, the DOT Immigration Enforcement Condition would be beyond even Congress's power, which does not extend to commanding local officials to carry out federal policy, *Printz v. United States*, 521 U.S. 898, 935 (1997), or coercing them to adopt federal policy as their own, *NFIB*, 567 U.S. at 578.

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This Court should reject Defendants' striking contention that they can achieve through coercive grant conditions what the Tenth Amendment prohibits them from doing directly: commanding local officials to carry out federal policy. *See* Dkt. # 151 at 6. Plaintiffs are likely to succeed on the merits of their Tenth Amendment claim.

B. The PI Should Include Additional Measures to Stop Defendants' Ongoing Violations of the Court's TROs and Restore the Status Quo

Defendants continue to bypass this Court's existing TROs, necessitating not only continued injunctive relief through a PI similar to the TROs but also additional measures to compel Defendants' prompt compliance. In addition to Defendants' continued refusal to treat signed grant agreements with enjoined provisions stricken as valid and thus release grant funds, Dkt. # 56 ¶ 9, HUD now has instructed its regional offices to "put on hold" Fiscal Year 2024 Continuum of Care (CoC) funds previously awarded to HUD Plaintiffs because of their participation in this lawsuit. 2d Beckmeyer Decl. (KCRHA) ¶¶ 5–6, Ex. A (describing call where HUD indicated it could not "process, forward any agreements to accounting for invoicing, or sign any agreements" and attaching a May 28 email from HUD that confirms, "[w]e have been instructed by HQ to place the FY2024 CoC grant agreements on hold for the WA-500 Continuum because of the pending litigation."); Witter Decl. (KCRHA) ¶ 3, Ex. A (May 29 email from HUD stating, "I was informed this morning to update KCRHA that HUD is working to comply with the court order and seeking clarity on how the TRO can be implemented in this circumstance. Currently, the FY2024 grants are still on hold."); *see also* Kong Decl. (Santa Clara) ¶ 5 ("HUD Headquarters has directed the field offices not to process any altered grant agreement.").

HUD's blanket hold on Plaintiffs' CoC funds blatantly violates the terms of this Court's TROs prohibiting Defendants from "pausing," "freezing," "delaying," or "withholding" CoC funds based on the unlawful grant conditions, Dkt. # 52 at 4; Dkt. # 152 at 2, and is the exact

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opposite of the Court's directive to "immediately take every step necessary to effectuate" the second TRO, "including clearing any administrative, operational, or technical hurdles to implementation," Dkt. # 152 at 2–3. Because the numerous CoC grants awarded to CoC Plaintiffs are staggered throughout the year, HUD's actions disrupt the normal administration of these grants and effectively suspend the program as to CoC Plaintiffs, upending the TROs' purpose to restore and maintain the status quo. *See* 2d Beckmeyer Decl. ¶ 10 (listing staggered CoC grant performance periods); Dkt. # 62 ¶ 8 (Boston) (similar).

In addition, hours before the May 21st PI hearing, in response to Plaintiffs' concern that FTA had retroactively applied the new FTA Master Agreement to previously executed grants, Dkt. # 58 at 4, Defendants filed a declaration stating that FTA's Transit Award Management System (TrAMS) always displays the current Master Agreement version when users select the "current view-print" display, Dkt. # 69-1 ¶ 9. According to the FTA declarant, that function is not intended to reflect a change in the version of the Master Agreement that applies to the grant. *Id.* ¶ 10. But this explanation is inconsistent with how TrAMS apparently functions. When King County reviewed grants obligated before January 20, 2025 (when the Trump administration came into office), the "current view-print" display in TrAMS reflects the *prior* version of the Master Agreement that was in effect when the grants were executed. 2d Supp. Morrison Decl. ¶¶ 6–7. By contrast, the "current view-print" display for two grants that were executed after January 20, 2025 reflects the *current* version of the Master Agreement, even though those grants were executed before that version was in effect. Defendants have offered no explanation for why TrAMS would reflect the new Master Agreement as to all grants executed since President Trump's inauguration. *Id.* ¶ 8; Dkt. # 60 ¶¶ 7–15. Notably, Defendants have never disclaimed an intention to retroactively

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apply the current Master Agreement, instead relying on technical explanations of TrAMS that do not hold up to examination.

Defendants now ask the Court to specify that any PI is not intended "to require Defendants to fund grants where Plaintiffs have unilaterally removed such terms." Dkt. #151 at 7. But Defendants' suggestion that the PI restrict only "Defendants' enforcement of any enjoined contract terms" makes no sense if Defendants are not honoring the grant agreements at all. Further, requiring Plaintiffs to sign grant agreements with the unlawful conditions would leave Plaintiffs open to third-party lawsuits under the False Claims Act—attacks encouraged by the Trump administration. Dkt. # 65 at 6 (letter from Deputy Attorney General Todd Blanche encouraging third-party lawsuits targeting DEI initiatives). To restore the status quo of routine administration of the grants at issue that existed prior to Defendants' attempted imposition of the unlawful conditions, the Court should specify that the PI permits Plaintiffs to accept and receive those grants without having to agree to any of the enjoined conditions.

The Court's Second TRO included additional directives that should have resulted in Defendants' compliance. *See* Dkt. # 152 ¶¶ 2–4. But as the Court's directives to Defendants got more prescriptive, Defendants' behavior got worse. To ensure Defendants' prompt compliance, the PI also should require verification that agency personnel have been properly directed and a status report to this Court. *See, e.g.*, *Colorado v. U.S. Dep't of Health & Human Servs.*, No. 1:25-CV-00121, 2025 WL 1017775, at *6 (D.R.I. Apr. 5, 2025) (requiring government to provide written notice and submit a status report to the court).

III. CONCLUSION

Other than responding to Plaintiffs' Tenth Amendment claim, Defendants fail to raise new arguments this Court has not already considered and rejected. They do not distinguish the DOT

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Grant Conditions as applied to grants issued by DOT, FHWA, FAA, or FRA. Nor do they identify new statutes that might authorize them to apply the unlawful conditions. Their Tenth Amendment argument overstates federal power and permits end runs around state and local sovereignty. And Defendants make no effort to dispute or refute Plaintiffs' detailed factual showing of irreparable harm. Meanwhile, Defendants have continued to thwart the plain terms of this Court's TROs. This Court should grant Plaintiffs' Motion and enjoin for the duration of this lawsuit Defendants' misuse of federal grants contrary to the purposes and policies established by Congress.

DATED this 29th day of May, 2025.

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* *Pro Hac Vice application forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2025, I electronically filed the foregoing document with the Clerk of the United States District Court for the Western District of Washington via the CM/ECF system which will send notification of such filing to all parties who are entered in this matter and registered with the CM/ECF system.

DATED this 29th day of May, 2025.

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